THE HON'BLE SRI JUSTICE N.V. RAMANA

W.P. No. 1430 of 2002

Oral order:

The petitioner is a retired judicial employee. On 27.05.1999, he suddenly fell seriously ill, and was admitted at Apollo Hospital, Heart and Kidney Centre, Visakhapatnam, where he underwent Cornoary Artery Bypass Surgery Grafting, and incurred an expenditure of Rs.1,04,450/-. He states that he submitted the medical bills for reimbursement to the Government through the District and Sessions Judge, Visakhapatnam, which got approval of the High Court, but the respondent vide orders dated 31.05.2001, impugned in this writ petition, rejected his case for reimbursement on the ground that the Apollo Hospital, Visakhapatnam, is not recognized by the Government.

The learned counsel for the petitioner submitted that apart from Apollo Hospital, though there are two other hospitals in Visakhapatnam, namely K.G. Hospital (Government) and Seven Hills Hospital (Private), recognized by the Government, he could not take treatment in the said hospitals, because the said hospitals did not have the facility to treat heart diseases. He submitted that the petitioner suffered severe heart attack, and but for the emergency situation in which he was placed, he was admitted in Apollo Hospital, Visakhapatnam directly, without being referred by NIMS, Hyderabad/SVIMS, Tirupati, otherwise, he would have followed the procedure prescribed. He submitted that the Government vide G.O. Ms. No. 175, Health, Medical and Family Welfare (K1) Department, dated 29.05.1997, has relaxed the rule of being referred in the case of emergencies. He submitted that though Apollo Hospital,

Visakhapatnam, was not a recognized hospital at the time when he took treatment, the fact remains, the main hospital at Hyderabad, is a recognized by the Government, and at any rate, since the Government has issued G.O. Ms. No. 332, Health Medical & Family Welfare (K1) Department, dated 23.08.2001, recognizing Apollo Hospital, Visakhapatnam, as a referral hospital, he is entitled to reimbursement of his medical expenses, by relaxing the condition of his having not been referred to the said hospital for treatment. He further submitted that the respondent without application of mind has issued the impugned order, in that he has himself has underwent surgery, but the impugned order has been passed, as if his wife underwent surgery. Hence, he prayed that the impugned order be set aside and the writ petition be allowed.

The respondent filed counter. The learned Government Pleader for Home, appearing on behalf of the respondent reiterating the counter averments submitted that as on the date when the petitioner took treatment at Apollo Hospital, Visakhapatnam, it was not recognized as a referral hospital. The said hospital came be to be recognized as a referral hospital by the Government vide G.O. Ms. Nos. 332, Health, Medical & Family (K1) Department, dated 23.08.2001. He submitted that since the petitioner was not referred to Apollo Hospital, Visakhapatnam, and the same not being a referral hospital at the time when the petitioner took treatment, the expenses incurred by him for his treatment in the said hospital cannot be reimbursed, and therefore, the respondent issued the impugned order, rejecting his claim for reimbursement.

Heard the learned counsel for the petitioner and the learned Government Pleader for Home for the respondent.

An employee of the State Government, either retired or serving,

is entitled to take treatment in private recognized hospitals only on being referred by NIMS, Hyderabad and SVIMS, Tirupati. They can take treatment in the said hospitals without being referred by NIMS, Hyderabad and SVIMS, Tirupati, only in emergency situations. However, G.O. Ms. No. 184 (Medical and Health) Department, dated 02.04.1992, issued by the Government, fixed a ceiling limit of Rs.50,000/- less 20% cut fixed for reimbursement of medical expenses incurred for treatment in a recognized private Hospital without referral letter in cases of emergency.

On 27.05.1999, the petitioner is said to have suffered massive heart attack, and was immediately admitted at Apollo Hospital, Visakhapatnam, which was not a recognized referral hospital by the Government on that day. Though there were two other hospitals in Visakhapatnam, K.G. Hospital (Government) and Seven Hills Hospital (Private), recognized by the Government as referral hospitals, it is the case of the petitioner, which is not disputed by the respondent in their counter that the said hospitals, did not contain the facilities for treating heart patients. In view of non-availability of facilities for treatment in the said hospitals, and having regard to his serious health condition, the petitioner contends that his family members have admitted him in Apollo Hospital, Visakhapatnam, where he underwent surgery.

Admittedly, the main Apollo Hospital at Hyderabad, was recognized as a referral hospital by the Government vide G.O. Ms. No. 38, Health, Medical and Family Welfare (K1) Department, dated 23.01.1996. Though as on the day, when the petitioner was operated Apollo Hospital, Visakhapatnam, was not recognized as a referral hospital, the same, subsequently came to be recognized as a referral hospital by the Government vide G.O. Ms. No. 332, Health, Medical & Family Welfare (K1) Department, dated 23.08.2001. This apart, two

days after the petitioner underwent surgery in Apollo Hospital, Visakhapatnam, the Government have issued G.O. Ms. No. 175, Health, Medical and Family Welfare (K1) Department, dated 29.05.1997, relaxing the condition of being referred to private hospitals for treatment by NIMS, Hyderabad and SVIMS, Tirupati, in emergency cases. A Division Bench of this Court in **T. Gopalakrishna Murthi v. State of A.P.**[1], interpreting Rule 14(ii) of All India Service (Medical Attendance) Rules, 1954, which was applicable to District Judges under Rule 18 of the Integrated Medical Attendance Rules, considered the power of the Government to relax the conditions in genuine cases, and held as follows:

> Clause (ii) of Rule 14 is an enabling provision. The concession cannot be claimed as a matter of right. But when the circumstances warrant application of enabling provision, the Government should not fail in its duty to extend the concession. The concession or the power of relaxation conferred on the Government has to be necessarily exercised when it could be reasonably said on application of objective standards that there is enough justification to extend the concession. The Government cannot act according to its whims and fancies in granting or rejecting the concession. The genuineness of the claim of the retired Officer, the circumstances in which the treatment was undergone, the hardship that would be caused if the relaxation is denied and the decision taken by the Government in similar cases and other relevant considerations should serve as guidelines and govern the exercise of power.

From the above, it is clear that the Government has the power to exercise its power to relax the conditions in genuine cases. Admittedly, in the instant case, the impugned order shows that it did not consider the circumstances under which the petitioner had to take treatment in a private unrecognized hospital. This apart, the impugned order shows that it has been passed without application of mind, and this is evident from the fact, that though the petitioner has underwent surgery, it came to be passed as if the petitioner's wife underwent the surgery.

Be that as it may, in the absence of medical facilities in the two recognized private hospitals for treatment of heart diseases, as stated

above, the family members of the petitioner, having regard to his serious health condition, who suffered two attacks, have taken him to Apollo Hospital, Visakhapatnam, for treatment, where he underwent surgery. Though the Apollo Hospital, Visakhapatnam, where the petitioner took treatment and underwent surgery, was not recognized as a referral hospital, the fact remains, the main Apollo Hospital at Hyderabad, was already a recognized one. However, Apollo Hospital, Visakhapatnam, subsequently came to be recognized as a referral hospital by the Government vide G.O. Ms. No. 332, Health, Medical & Family Welfare (K1) Department, dated 23.08.2001. The Government in G.O. Ms. No. 184 (Medical and Health) Department, dated 02.04.1992, fixed a ceiling limit of Rs.50,000/- less 20% cut fixed for reimbursement of medical expenses incurred for treatment in a recognized hospital without referral letter in emergency cases. The Government have the power to relax the conditions of obtaining prior approval for taking treatment in private hospitals in genuine cases, is evident from the fact that they have issued orders in G.O. Ms. No. 175, Health, Medical and Family Welfare (K1) Department, dated 29.05.1997 to that effect. Admittedly, the respondent while rejecting the case of the petitioner, have not taken into consideration all these aspects. The respondent while rejecting the case of the petitioner ought to have also examined the hardship that would be caused to the petitioner, if he was not reimbursed, and more so when the High Court on administrative side has recommended the case of the petitioner for reimbursement. Since the impugned order was passed by the respondent without taking into consideration the relevant aspects, and without appreciating their power to relax the conditions in genuine cases, I am of the considered opinion, that the matter requires reconsideration by the respondent.

Hence, the impugned order is set aside. The respondent is directed to reconsider the issue once again, in the light of their power to relax the conditions in genuine cases, as stated above, and also taking into consideration the emergency situation in which the petitioner was taken to Apollo Hospital, Visakhapatnam, namely that he suffered two heart strokes, that the recognized two referral hospitals in Visakhapatnam, did not have proper medical facilities to treat heart diseases, and also keeping in view the fact that subsequently, Apollo Hospital, Visakhapatnam, came to be recognized as a referral hospital, and pass appropriate orders, expeditiously, preferably within a period of two months from the date of receipt of a copy of this order.

Accordingly, the writ petition is allowed. No costs.

N.V. RAMANA, J.

Dated: 26th July, 2007.
KSR

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[1] 2000 (5) ALT 721 (DB)